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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,770	11/15/2001	Jerry Gordon Enns	902-1-1-1	4338
23898	7590	11/18/2004	EXAMINER	
VINCENT L. CARNEY LAW OFFICE			GREEN, CHRISTY MARIE	
P.O. BOX 80836			ART UNIT	
LINCOLN, NE 68501-0836			PAPER NUMBER	
			3635	

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/002,770	Applicant(s) ENNS, JERRY GORDON	
	Examiner Christy M Green	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: Exhibit A, attached figures (2).

DETAILED ACTION

This is a third office action for serial number 10/002770, entitled Utility Pole Erection, filed on November 15, 2001.

Response to Amendment

In response to the examiners office action mailed May 11, 2004, applicant has amended claims 2, 9-11, 13 and 14.

Claim Objections

Claim 13 is objected to because of the following informalities: In regards to claim 13, the term "can be" is considered to be unclear whether or not the limitations following the terms are actually implemented within the invention or not. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 12 stand rejected under 35 U.S.C. 102(b) as being anticipated by Crookham.

Crookham discloses an apparatus comprising a hydraulic pump (54) at least one hydraulic cylinder (40,52) having a piston connected to a first **of (12) the two** at least partly tubular sections **of a utility pole (via 100)**, the hydraulic cylinder including a piston rod (see attached figure 16) **connected to the piston**, at least one bracket

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(48,50) at least one movable connecting member (32) the movable connecting member (32) being connected at one location on the movable connecting member (by 36) to the piston rod (by 20, or 36 – see attached figure 18) of the at least one hydraulic cylinder (40) and at any of a plurality of other locations on the movable connecting member (by 44) to the at least one bracket (48,50) *whereby* the **tubular sections of a utility pole (12 and 14 – figures 9-11)** may be pulled together (figure 5, 11 and 18); the at least one bracket including means for fastening (66, 67) the at least one bracket to a **second** of the **two** at least plurality of tubular sections **of a utility pole**; and, at least one of the bracket (as shown in figure 14 – “48”) and movable connecting member (32) has a plurality of cam surfaces (as shown in figure 14 “34”), the movable connecting member (32) including at least one gripping means (80 – where 42 points to – figure 14) for connecting to the bracket (48, 50) on a retraction stroke (by 76) of the hydraulic cylinder (52).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crookham, US Patent # 5,794,387 in view of McMullin, US patent # 2,980,456,

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Thirmann, US Patent # 4,362,451 and further in view of Marostica et al, US patent # 3,933,261 and Gordin et al. US patent # 6,398,392.

Crookham discloses the claimed invention a method of erecting a utility pole comprising the steps of fabricating a plurality of tubular sections (interpreted to be a pole with a plurality of sections, since Crookham states that the pole can be of other types of poles and bases that are also included within the scope of what the invention can be used with-column 5, lines 15-16) of utility poles each having at least a portion tapered (column 4, lines 62-63), the diameter of at least one of the plurality of tubular sections being larger than the diameter of another (12, 14 - figures 8-11); erecting the utility pole (col. 1, lines 19-20); attaching at least one hydraulic cylinder/apparatus (52) having a piston rod (obvious and well known in the art that a hydraulic cylinder will have a piston rod of some sort in order to provide differential pressure of the means [i.e. fluid, grease or air] within the hydraulic cylinder), to at least a first section of a utility pole (14 - figure 5), attaching a/the bracket (74) to a second section of a utility pole (12), connecting the piston rod (obviously within the cylinder) of the cylinder/apparatus (52) to an arm (32); connecting the arm (32) to the bracket (figure 5 - by 66), pulling the first and second sections (12, 14) together by activating the hydraulic cylinder (40,52) to change the position of the arm (column 5, lines 39-40 and column 6, lines 3-8); resetting the arm (column 7, lines 59-65) between pulling strokes; moving the arm (32) away from a gripping member (26) and dropping it onto the gripping member (figures 11 and 12).

In regards to claims 14-16, Crookman also teaches the step of connecting a piston rod (see attached figure 18) of the cylinder (40, 52) to a flexible member (80 by

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50), connecting the flexible member (80) to the bracket (50), pulling the first and second sections (12, 14) together by activating the hydraulic cylinder (40, 52) to change positions of the flexible member (80 – figure 9-11); resetting the arm (interpreted to be 32) without manually adjusting the apparatus between strokes (by the hydraulic cylinder – column 7, lines 45-49); automatically resetting a position (between figures 9, 10 and 11) with respect to the bracket (48, 50) of an arm (32) that is connected to move with a piston rod (see attached figure 18) during one of an extension and retraction of the piston rod between strokes without manually adjusting the apparatus (by the hydraulic cylinder – column 7, lines 45-54).

Although Crookman teaches that It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the steps of bringing the at least one of the plurality of tubular sections and the another of the plurality of the tubular sections to a site for erection [obvious for the construction of the pole or column to occur (column 1, lines 13-24)], it is further taught by Marostica et al. and it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a construction machine with implementing the step with of bringing the at least one of the plurality of tubular sections and the another of the plurality of the tubular sections to a site for erection with the method steps on Crookman in order to decrease the cost of operation, reduce the number of operators required for performing tasks on-site (column 1, lines 54-56 and column 2, lines 23-26).

Although Crookman teaches the step of pulling the at least one and the another tubular sections together with an apparatus (10, 28) that provides short repeated pulling

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strokes (by 40 and 52) prior to erecting the utility pole (by 54-60); it is further taught by Gordin et al. that portion of the pole are shipped in partial assembled form and then assemble the remainder on-site. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide this step as taught by Gordin with the method steps of Crookman in order to provide an efficient way to install a pole (column 5, lines 55-61).

McMullin teaches that it is known in the art to provide the step of fabricating a plurality of tubular sections of utility poles each having at least a portion tapered (column 2, lines 17-22), it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the step of fabricating a plurality of tubular sections of utility poles of McMullin with the pole in Crookham, in order to allow the sections to slide for a limited distance within the adjacent larger section and to provide an improved pole which may be used to push, pull or twist work located at a distance from the ground without danger of the pole collapsing (column 1, lines 60-69).

Thiermann teaches that it is known in the art that a piston rod is gradually retracted by releasing the hydraulic pressure periodically from the hydraulic cylinder to allow the pole, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the step of pulling the tubular sections together with an apparatus that provides short repeated pulling strokes without manually adjusting the apparatus between strokes of Thiermann with the apparatus of Crookham in order to allow the pole to descend into the hole without manually adjusting it (column 5, lines 17-21).

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMullin, US Patent # 2,980,456 in view of Marostica et al and further in view of Gordin.

McMullin discloses the claimed invention a method of erecting a utility pole including the steps of fabricating tubular sections **of utility poles** (column 2, lines 23-31 - interpreted to be the same as the tubular sections are formed of specific materials), pulling **at least two of the at least two tubular** sections together with short repeated strokes by manually adjusting the position of flexible member (24) connecting a tug bracket (25) and a pull arm (31); erecting the utility pole (figure 1); a first location on the flexible member (24) is attached to one **of the tug bracket and pull arm** (25, 31) and a plurality of other locations on the flexible member include a gripping means (at 21 – figure 2).

McMullin does not disclose the step of erecting the utility pole after the sections have been assembled. Gordin teaches that it is known in the art to provide the step of erecting a utility pole after the sections have been assembled (as shown in figures 22 and 23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the step of erecting a utility pole after the sections have been assembled as taught by Gordin with the pole within McMullin in order to provide a pre-assembled pole and then installing it into the ground (column 13, lines 38-40), which would ultimately reduce the length of time it would take to stack one part of the pole on top of another.

Although McMullin teaches that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the step of bringing

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at least two of the tubular sections of the utility pole to a site (obvious when McMullin states it can be quickly disassembled for cleaning and repair - column 1, lines 55-60 - and also since it is a sectional pole, its obvious this would have to be brought to a site to assemble the pole to assure a pole with better transporting features); it is further taught by Marostica et al. that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a construction machine with implementing the step with of bringing the **at least one of the plurality of tubular sections and the another of the plurality of the tubular sections** to a site for erection with the method steps on McMullin in order to decrease the cost of operation, reduce the number of operators required for performing tasks on-site (column 1, lines 54-56 and column 2, lines 23-26).

Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Crookham.

Crookham discloses the claimed invention as stated above in claim 11, including a tug bracket (76) including a means for fastening (66, 67) the tug bracket to one of two sections, a flexible member (80) having one end connected to a tug bracket (76) and the other end, connected to a piston of the hydraulic cylinder (52 by 44).

Crookham does not disclose the length of the flexible member between the piston and the tug bracket being adjustable, it would have been an obvious matter of design choice to make the length of the flexible member between the piston and the tug bracket adjustable since the applicant has not disclosed that the length of the flexible member being adjustable solves any stated problem or is for any particular purpose and

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it appears that the invention would perform equally well with the flexible member as interpreted within the reference cited.

Response to Arguments

Applicant's arguments filed 8/23/04 have been fully considered but they are not persuasive.

Applicant's arguments in regards to paragraph containing the statement, "the applicant takes the position that the case law does not permit the manipulation of either the claim language or the disclosure of a reference to reach such a result", ending on page 9 of applicants filed amendment, fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

In regard to the applicants argument that the examiner must show a suggestion in the reference that the parts and steps compiled from the five cited references be assembled into the claimed invention, and why would it have been obvious from the references that do not teach the need for, the problem of accomplishing nor any solution of the problem of accomplishing transporting and assembling of particularly tall utility poles, the examiner recognizes the argument, however, all of the reference are viewed to be related to the applicants invention based upon how the claims are written, in regards to the issue of transporting a particularly tall utility pole, the reference Marastica et al. was used to teach that this step is known in the art; and regarding the steps of assembling tall utility poles, Cookman, McMullinGordin and Thiermann were primarily

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used to teach that the limitations as claimed in the applicants invention, the references are interpreted to be readable on these references.

In regards to the applicants argument that McMullin teaches a telescoping tool, the examiner recognizes the argument, however the reference recites a telescoping sectional pole and the examiner is using the reference to teach that sections of a telescoping pole are tapered, the step of erecting a pole and fabricating tubular section. Also, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In regards to the applicants argument that the inner sleeve 76 is not a tug bracket but only part of the collar and the lip is not a flexible member that *can be* adjusted, the examiner recognizes the argument, however the inner sleeve (76) is interpreted to be a tug bracket because it can perform the same function as a tug bracket, although it may be a sleeve, and since the applicant has not provided any particular reason why the length of the flexible member being adjustable or that it solves any problems, the examiner has interpreted the lip to be (80) since this lip seems to provide an equivalent function as a flexible member.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 703-308-9693. The examiner can normally be reached on M-F 8:00-4:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cg

November 11, 2004.



Carl D. Friedman
Supervisory Patent Examiner
Group 3600

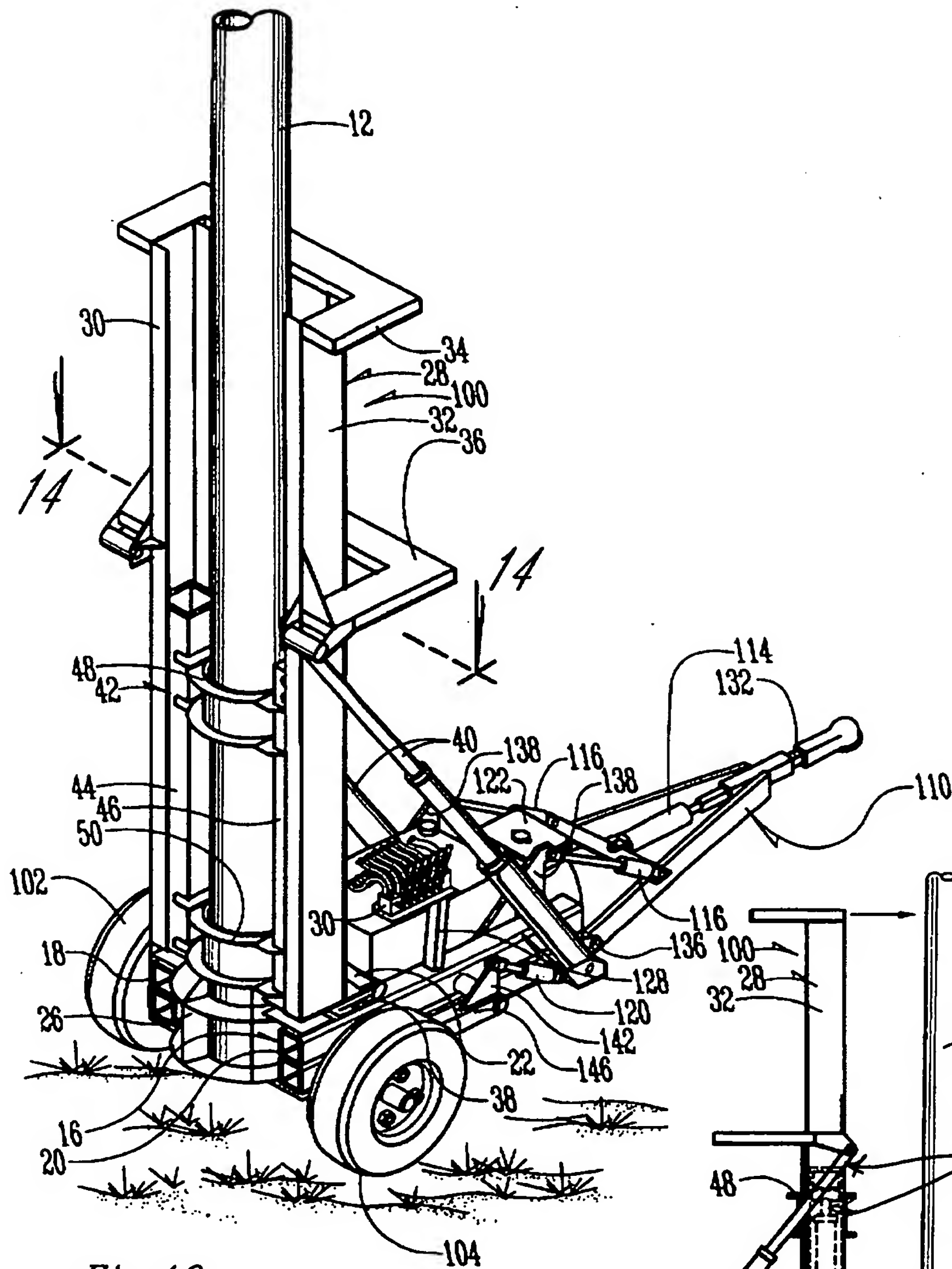


Fig. 12

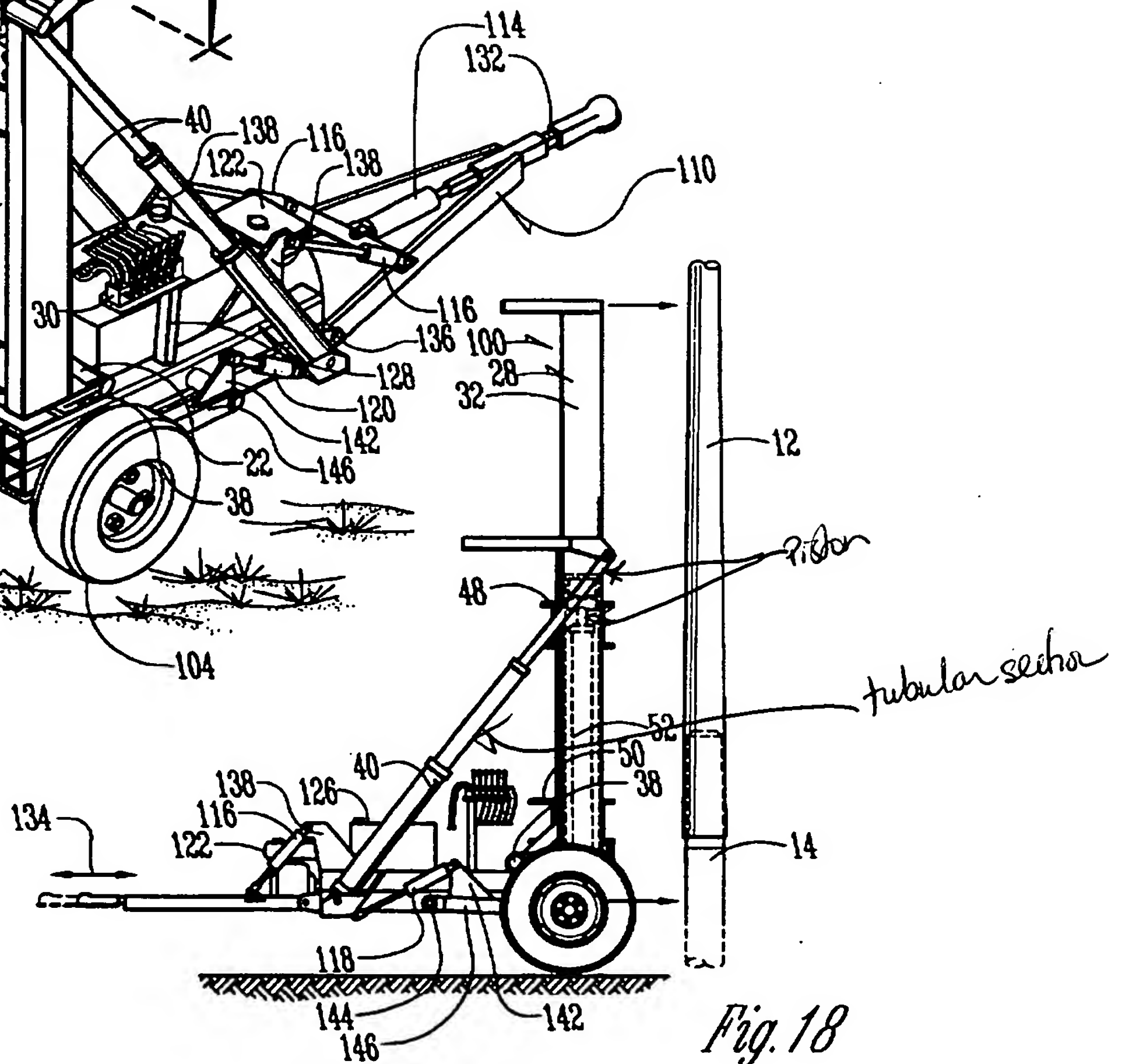


Fig. 18

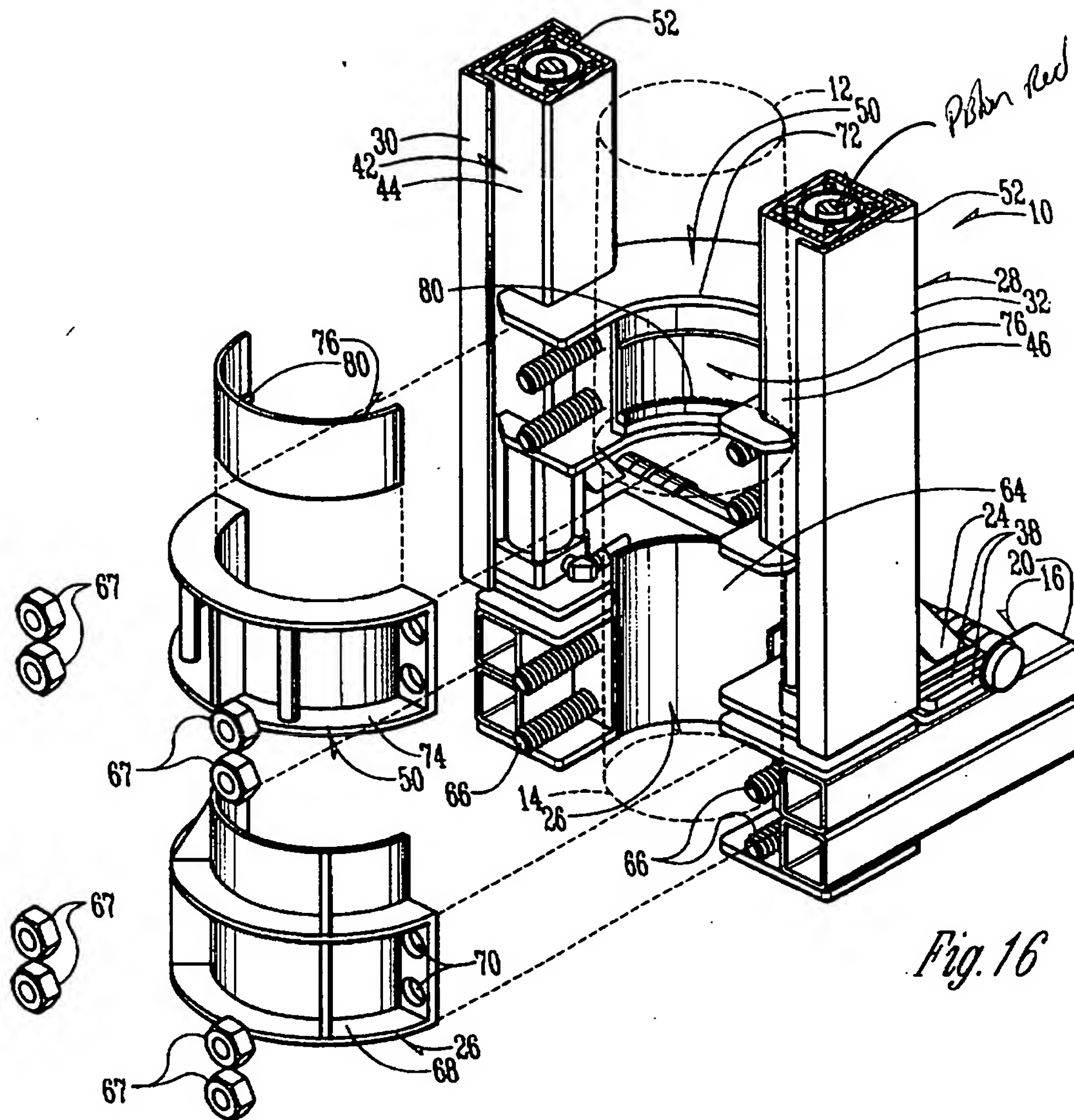


Fig. 16

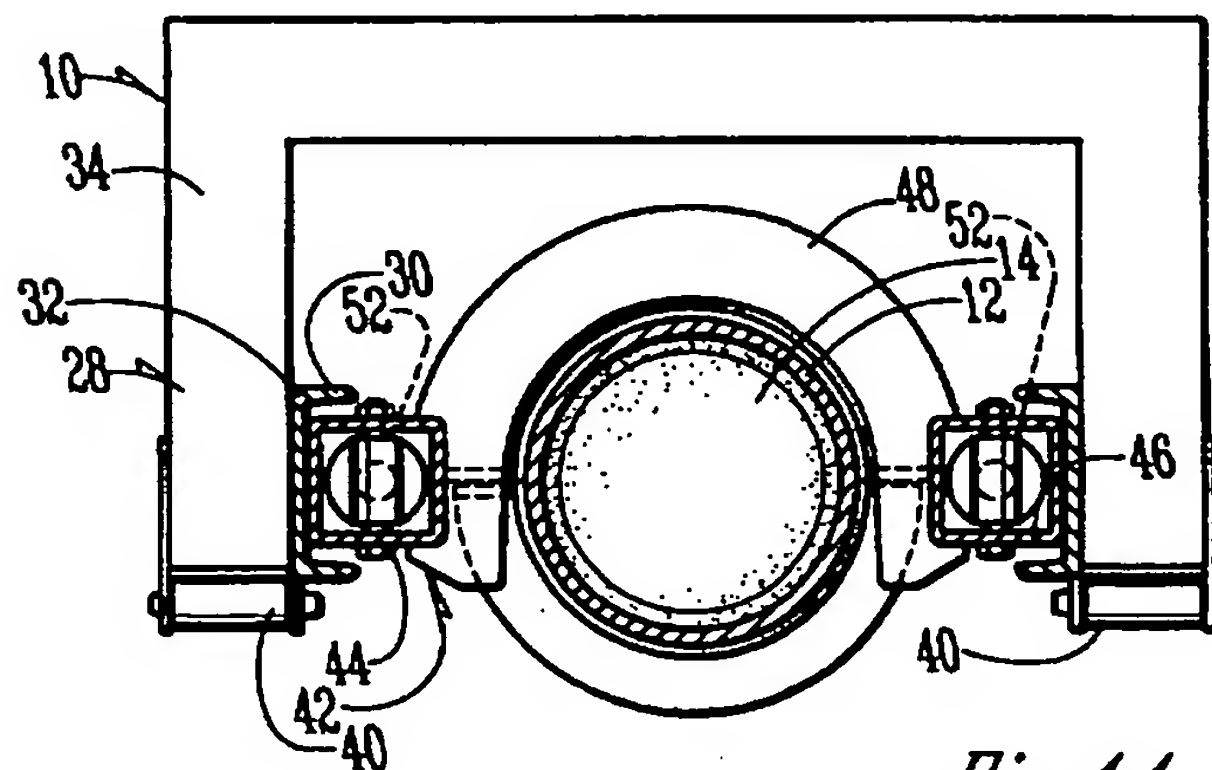


Fig. 14